

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES JOHN DAVIS,

Plaintiff,

v.

KILOLO KAJIKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 2:20-cv-01197 CKD (SS)

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Disability Income Benefits (“DIB”) under Title II of the Social Security Act (“Act”). The parties have consented to Magistrate Judge jurisdiction to conduct all proceedings in the case, including the entry of final judgment. For the reasons discussed below, the court will grant plaintiff’s motion for summary judgment and deny the Commissioner’s cross-motion for summary judgment.

BACKGROUND

Plaintiff, born in 1961, worked from 1995 through 2008 as a truck driver and supervisor at two trucking companies. Administrative Transcript (“AT”) 476-477. He applied on May 22, 2014 for DIB, alleging disability beginning November 21, 2008. AT 17, 477. Plaintiff alleged he was unable to work due to type 2 diabetes, peripheral neuropathy, and low back pain. AT 212,

1 215. In a decision dated November 2, 2016, the ALJ determined that plaintiff was not disabled.¹
2 AT 17-26. After a district court remand to consider additional evidence, a different ALJ issued a
3 decision dated April 3, 2020, again finding plaintiff not disabled. AT 465-478. Plaintiff
4 challenges the 2020 decision in the instant case.

5 The ALJ made the following findings (citations to 20 C.F.R. omitted):

6 1. The claimant meets the insured status requirements of the Social
7 Security Act through December 31, 2023.
8 2. The claimant engaged in substantial gainful activity during the
9 following periods: April 1, 2016 to the present.
10 3. However, there has been a continuous 12-month period(s) during
11 which the claimant did not engage in substantial gainful activity. The

11 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
12 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
13 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
14 part, as an “inability to engage in any substantial gainful activity” due to “a medically
15 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
16 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
17 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
18 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

19 Step one: Is the claimant engaging in substantial gainful
20 activity? If so, the claimant is found not disabled. If not, proceed to
21 step two.

22 Step two: Does the claimant have a “severe” impairment? If
23 so, proceed to step three. If not, then a finding of not disabled is
24 appropriate.

25 Step three: Does the claimant’s impairment or combination
26 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
27 404, Subpt. P, App.1? If so, the claimant is automatically determined
28 disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past
work? If so, the claimant is not disabled. If not, proceed to step five.

Step five: Does the claimant have the residual functional
capacity to perform any other work? If so, the claimant is not
disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

1 remaining findings address the period prior to April 1, 2016 in which
2 the claimant did not engage in substantial gainful activity.

3 4. The claimant has the following severe impairments: diabetes with
4 peripheral neuropathy, hypertension, hyperlipidemia, obesity, and
5 lumbago.

6 5. The claimant does not have an impairment or combination of
7 impairments that meets or medically equals one of the listed
8 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

9 6. After careful consideration of the entire record, the undersigned
10 finds that the claimant has the residual functional capacity to perform
11 medium work, except he cannot climb ladders, ropes, or scaffolds.
12 He can frequently climb ramps and stairs, balance, stoop, kneel,
13 crouch, and crawl. He cannot work at heights and must avoid
14 concentrated exposure to operating heavy machinery, including
15 driving.

16 7. The claimant is unable to perform any past relevant work.

17 8. The claimant was born on XX/XX/1961, which is defined as a
18 younger individual 18-49 on the alleged disability onset date. The
19 claimant subsequently changed age category to closely approaching
20 advanced age through March 31, 2016.

21 9. The claimant has at least a high-school education and is able to
22 communicate in English.

23 10. Transferability of job skills is not material to the determination
24 of disability because using the Medical-Vocational Rules as a
25 framework supports a finding that the claimant is 'not disabled,'
26 whether or not the claimant has transferable job skills.

27 11. Considering the claimant's age, education, work experience, and
28 residual functional capacity, there are jobs that exist in significant
numbers in the national economy that the claimant can perform.

12. The claimant has not been under a disability, as defined in the
Social Security Act, from November 21, 2008 through the date of
this decision.

13 AT 467-478.

14 The ALJ relied on vocational expert (VE) testimony that plaintiff would be able to
15 perform the requirements of medium, unskilled occupations such as scrap sorter, kitchen helper,
16 and meat clerk. AT 477.

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1 ISSUES PRESENTED

2 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
3 disabled: (1) the ALJ erroneously found that plaintiff engaged in substantial gainful activity after
4 April 1, 2016; (2) the ALJ erroneously discounted the opinion of a treating physician; and (3) the
5 ALJ erroneously discounted plaintiff's subjective symptom testimony.

6 LEGAL STANDARDS

7 The court reviews the Commissioner's decision to determine whether (1) it is based on
8 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
9 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
10 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
11 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable
12 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th
13 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is
14 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
15 ambiguities." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
16 "The court will uphold the ALJ's conclusion when the evidence is susceptible to more than one
17 rational interpretation." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

18 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
19 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ's
20 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
21 affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
22 administrative findings, or if there is conflicting evidence supporting a finding of either disability
23 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
24 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
25 weighing the evidence. See Burkhardt v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

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1 ANALYSIS

2 A. Substantial Gainful Activity

3 Plaintiff asserts that the ALJ erred in finding that he “consistently engaged in substantial
4 work activity since April 1, 2016.” See AT 469.

5 Under the Social Security Act, disability is defined as the inability “to engage in any
6 substantial gainful activity by reason of any medically determinable physical or mental
7 impairment which...can be expected to last for a continuous period of not less than twelve
8 months.” 42 U.S.C. § 1382c(a)(3)(A). “Substantial gainful activity is work activity that is usually
9 done for pay or profit and that involves doing significant physical or mental activities, taking into
10 account the nature of the work, how well it is performed, whether it is performed under special
11 conditions, self-employment, and time spent working.” Simpson v. Berryhill, No. 18-CV-00309-
12 JSC, 2019 WL 2106591, at *2 (N.D. Cal. May 14, 2019) (citing 20 C.F.R. §§ 404.1572–73;
13 416.972–73).

14 In determining whether work activity constitutes substantial gainful activity, the SSA’s
15 “primary consideration will be earnings [the claimant] derive[s] from the work activity.” 20
16 C.F.R. § 416.974(a)(1). “The mere existence of earnings over the statutory minimum is not
17 dispositive.” Keyes v. Sullivan, 894 F.2d 1053, 1056 (9th Cir. 1990) (citing Chicager v.
18 Califano, 574 F.2d 161, 163 (3d Cir. 1978)). However, earnings over the statutory minimum
19 creates a presumption of substantial gainful employment. Id. A claimant may rebut the
20 presumption “based on earnings with evidence of his inability to be self-employed or to perform
21 the job well, without special assistance, or for only brief periods of time.” Id. (citing Anderson v.
22 Heckler, 726 F.2d 455, 456 (8th Cir. 1984)). “In considering whether the presumption is
23 rebutted, the factors to be considered include the responsibilities and skills required to perform
24 the work, the amount of time the individual spends working, the quality of the individual’s work,
25 special working conditions, and for individuals who are self-employed, the value of their work to
26 the business.” Corrao v. Shalala, 20 F.3d 943, 948 (9th Cir. 1994). See also Katz v. Secretary of
27 Health & Human Services, 972 F.2d 290, 293 (9th Cir. 1992) (“The earnings presumption can be
28 rebutted. Factors to be considered in addition to the amount earned include the time spent

1 working, quality of a person's performance, special working conditions, and the possibility of
2 self-employment.”).

3 Here, the ALJ found that plaintiff's in-home care of his elderly mother constituted
4 substantial gainful activity after April 1, 2016. The ALJ summarized plaintiff's testimony as
5 follows:

6 The claimant testified at the [February 2020] hearing that he is a
7 caregiver for his mother and he is still caring for her currently. He is
8 currently paid for just over 160 hours per month of care at a rate of
9 \$13 per hour. His hours have steadily increased since 2016. His
10 mother is blind and deaf. She will be 100 years old in September
11 2020. He helps feed her and helps her to the bathroom. She is
12 unsteady. He helps with chores and makes meals. 3 years ago, her
13 doctor started coming to the house because his mother is bedridden.

14 AT 468; see AT 492-495 (hearing testimony).

15 The ALJ noted that, since 2013, plaintiff had been paid by the state's In Home Supportive
16 Services (IHSS) program to be an adult care provider for his mother.² AT 468. The ALJ noted
17 that plaintiff reported in March 2015 that he “cared for himself, cooked simple meals, washed
18 dishes, vacuumed, shopped and drove. In November 2015, he reported helping his mother with
19 toileting, ‘dressing, bathing, etc.’” AT 474, citing AT 383, 400. The ALJ found that, beginning
20 in April 2016, plaintiff's earnings from IHSS exceeded the statutory minimum.³ AT 468-469.

21 Plaintiff acknowledges that his IHSS income came to exceed the substantial activity
22 guidelines. (ECF No. 28 at 2.) This created a rebuttable presumption of substantial gainful
23 employment. Plaintiff asserts that the ALJ failed to explicitly consider whether his work was
24 done under “special conditions” under 20 C.F.R. § 404.1573(c), which provides:

25 The work you are doing may be done under special conditions that
26 take into account your impairment, such as work done in a sheltered

27 ² Plaintiff has attached to the complaint copies of W-2 forms listing his mother, not IHSS, as his
28 employer in 2017, 2018, and 2019. (ECF No. 1-1.) This evidence was not before the ALJ and
did not factor into his decision. (See ECF No. 17.)

29 ³ The ALJ found that plaintiff earned roughly \$1,400.00 per month during the last three quarters
30 of 2016, over \$18,000 per year in 2017 and 2018, and over \$22,000 per year in 2019, putting him
31 in excess of the monthly earning threshold during this period. AT 468.

1 workshop or as a patient in a hospital. If your work is done under
2 special conditions, we may find that it does not show that you have
3 the ability to do substantial gainful activity. . . . Examples of the
4 special conditions that may relate to your impairment include, but are
5 not limited to, situations in which—

6 (1) You required and received special assistance from other
7 employees in performing your work;

8 (2) You were allowed to work irregular hours or take frequent rest
9 periods;

10 (3) You were provided with special equipment or were assigned
11 work especially suited to your impairment;

12 (4) You were able to work only because of specially arranged
13 circumstances, for example, other persons helped you prepare for or
14 get to and from your work;

15 (5) You were permitted to work at a lower standard of productivity
16 or efficiency than other employees; or

17 (6) You were given the opportunity to work despite your impairment
18 because of family relationship, past association with your employer,
19 or your employer's concern for your welfare.

20 (d) If you are self-employed. Supervisory, managerial, advisory or
21 other significant personal services that you perform as a self-
22 employed individual may show that you are able to do substantial
23 gainful activity.

24 (e) Time spent in work. While the time you spend in work is
25 important, we will not decide whether or not you are doing
26 substantial gainful activity only on that basis. We will still evaluate
27 the work to decide whether it is substantial and gainful regardless of
28 whether you spend more time or less time at the job than workers
who are not impaired and who are doing similar work as a regular
means of their livelihood.

21 (Emphasis added.)

22 Upon determining that plaintiff's earnings after April 2016 exceeded the statutory
23 minimum, the ALJ reasoned as follows:

24 This work is not sheltered employment because the employer, the
25 State of CA IHSS, does not direct how the work is performed or
26 under what conditions . . . [and does not provide] any
27 accommodation even if the claimant is only doing the work in short
28 increments. Likewise, even if the claimant is only doing the work
part time, part time work is still substantial work if it exceeds the
annual presumption threshold[.] The regulations do not provide an
exception for IHSS earnings. Moreover, the claimant acknowledged
that he had no special conditions or expenses related to this work.

1 AT 469 (emphasis added). In support of the last statement, the ALJ cited plaintiff's November
2 2008 work activity report, submitted with his DIB application, in which he checked a box
3 indicating that he did not work under any "special conditions," such as receiving extra
4 supervision, special help, working different hours, taking more rest breaks, or performing less
5 work than other workers. AT 203-205.

6 Plaintiff argues that the ALJ's decision "fails to . . . properly consider [the § 404.1573(c)]
7 factors, particularly the factors of irregular hours and frequent rest periods, lower standards of
8 productivity, and opportunity to work because of family relationship, and the special
9 circumstances of being present performing most of the tasks for himself anyway." (ECF No. 28
10 at 5.) He asserts that explicit consideration of these factors would result in a finding that
11 plaintiff's in-home care of his mother was so much less demanding than a regular job that it did
12 not constitute substantial gainful activity, despite paying above the statutory minimum. Plaintiff
13 further argues that the ALJ failed to develop the record by not questioning him further about the
14 conditions under which he worked. In sum, plaintiff argues that the ALJ glossed over the multi-
15 factor analysis he was required to make under § 404.1573(c), instead citing a checkbox form to
16 find that no special conditions applied.

17 Defendant counters that the ALJ considered whether plaintiff's work was done under
18 special conditions, such as in a sheltered workshop, "and reasonably concluded that, while a
19 family relationship was present, he was nevertheless performing SGA." (ECF No. 20 at 12.)
20 While defendant cites evidence that arguably supports a finding that no special conditions existed,
21 the court is limited to reviewing the reason given by the ALJ: namely, the checkbox form
22 submitted with plaintiff's 2018 disability application. See Orn v. Astrue, 495 F.3d 625, 630 (9th
23 Cir. 2007) (noting that a court may "review only the reasons provided by the ALJ in the disability
24 determination and may not affirm the ALJ on a ground upon which he did not rely").

25 In Griggs v. Astrue, 2011 WL 4591079, *2 (Sept. 30, 2011), a court in this district
26 concluded that "the ALJ failed to apply and follow the [applicable] guidelines . . . in considering
27 plaintiff's earnings and determining whether she was engaging in SGA at the relevant times."
28 Plaintiff was working as an IHSS caregiver for a friend. Id. at *3. The court reasoned that "[t]he

1 ALJ should have evaluated the evidence indicating that plaintiff's work was done under special
 2 conditions, including the evidence before the ALJ that plaintiff was not the only IHSS provider
 3 employed to assist her friend/employer and that plaintiff was permitted to work irregular hours
 4 and take rest periods when needed." Id. at *4. The court continued:

5 At the administrative hearing in this case plaintiff presented evidence
 6 that can be fairly characterized as rebutting the SGA presumption,
 7 even if that presumption was properly invoked in the first instance.
 8 Yet, the ALJ's brief treatment of the issue . . . did not address that
 9 evidence. Accordingly, the ALJ failed to apply the correct legal
 10 standards in finding that plaintiff had engaged in substantial gainful
 11 activity since February 1, 2008.

12 . . . The court finds that the Commissioner's decision must be
 13 reversed because the ALJ did not develop the record in accordance
 14 with the guidelines established in SSR 83-33⁴ and, as a result, the
 15 decision that plaintiff engaged in SGA is not supported by substantial
 16 evidence.

17 Id. at **4-5. See also Kohnen v. Colvin, 2014 WL 2568886, *5 (N.D.Cal. June 6, 2014) (despite
 18 testimony that claimant needed extra help at work, "the ALJ failed to analyze how well Kohnen
 19 performed his work or what special conditions he worked under to perform his job. These facts
 20 are directly relevant to determining whether Kohnen was performing SGA") (remanding for
 21 further development and evaluation of the record); Chavez v. Colvin, 2014 WL 12029267, *4
 22 (E.D.Cal. April 25, 2014) (despite testimony of "very lenient" employer and frequent breaks, "the
 23 ALJ did not discuss whether plaintiff's work was performed under special conditions or whether
 24 his earnings at those positions were subsidized. The ALJ's failure to do so was legally erroneous
 25 and merits remand.").

26 Here, plaintiff testified at the first hearing, in September 2016, that although IHSS was
 27 paying him to take care of his elderly, blind mother, "I wouldn't really call it a job. . . . I don't
 28 leave the house. I don't even get dressed." AT 48. He testified that he brought his mother food,
 29 helped her to the bathroom, and made sure she took the right medications. AT 48. He further

30 ⁴ See SSR 83-33 (S.S.A.), 1983 WL 31255 at *8 ("Under the tests of comparability and worth of
 31 work, a finding of SGA will not be made if there is a reasonable explanation as to why an
 32 employee's earnings are not substantial. A reasonable explanation might be the inability to
 33 perform the full responsibilities of the job, such as working at a slower rate or working fewer
 34 hours (part-time) than unimpaired persons. It would be speculative to conclude that such an
 35 individual could increase a limited work effort to a level of SGA.").

1 testified that, in a typical day, he spent most of the day in a recliner. “Then I get up because I
2 have to get up anyway. And then I go check on my mother, which is mostly in bed most of the
3 time.” AT 57. At the second hearing in February 2020, plaintiff testified that his mother was
4 now legally blind and deaf and almost 100 years old. AT 493. He testified that his work had
5 steadily increased since 2016 when she broke her clavicle, and that he assisted her with
6 medication, meals, and the bathroom. AT 493-494. Plaintiff testified that his mother was
7 bedridden and her doctors came to the house, so he did not need to drive her to appointments. AT
8 494-495. He testified that he made meals and did household chores in the course of caring for
9 this mother, both of which he did for himself anyway. AT 494.

10 As in Griggs, plaintiff presented evidence that arguably rebutted the SGA presumption,
11 but the ALJ failed to develop the record on this issue and analyze “special conditions” under the §
12 404.1573(c) factors. This was legal error. The court next considers whether this error warrants a
13 second remand of this matter.

14 **B. Harmful Error**

15 The alleged period of disability in this case runs from November 2008 to April 2020, the
16 date of the second ALJ decision. The ALJ determined that, as of April 2016, plaintiff was
17 engaged in substantial gainful activity and focused on plaintiff’s impairments prior to April 2016,
18 discounting later evidence of disability as irrelevant. See AT 469 (“The remaining findings
19 address the period prior to April 1, 2016 in which the claimant did not engage in substantial
20 gainful activity.”).

21 For example, the ALJ noted that plaintiff “sustained a right ankle fracture on August 12,
22 2016. However, the injury and subsequent limitations occurred after the claimant began engaging
23 in substantial gainful work activity on April 1, 2016.” AT 469. At the first hearing in 2016,
24 plaintiff testified that he had fallen in the kitchen and fractured his foot, which required surgery to
25 insert a plate and five screws. AT 49; see AT 470. At the second hearing in 2020, plaintiff
26 testified that he’d had another surgery on his foot in 2017 to repair a broken screw; he stated that
27 he sometimes walked with a limp. AT 500-502. In September 2016, plaintiff’s long-term
28 treating physician, Dr. Stacy Berrong, opined that he had significant limitations in sitting,

1 standing, and walking, and would need frequent unscheduled breaks (among other limitations),
2 due in part to a right ankle fracture. AT 474, citing AT 739-751. The ALJ gave little weight to
3 Dr. Berrong's opinion, reasoning that "the claimant's limitations after March 31, 2016 are not
4 relevant because the claimant was engaging in substantial gainful work activity." AT 475.

5 With the last four years of alleged disability off the table, the ALJ did not consider
6 plaintiff's status after he turned 55 in 2016 and the disability criteria changed. See AT 477 ("The
7 claimant subsequently changed age category to closely approaching advanced age through March
8 31, 2016."). Based on the foregoing, the undersigned concludes that the ALJ's error in the SGA
9 analysis was not harmless. Plaintiff is entitled to summary judgment.⁵

10 **CONCLUSION**

11 With error established, the court has the discretion to remand or reverse and award
12 benefits. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). A case may be remanded
13 under the "credit-as-true" rule for an award of benefits where:

14 (1) the record has been fully developed and further administrative
15 proceedings would serve no useful purpose; (2) the ALJ has
16 failed to provide legally sufficient reasons for rejecting evidence,
17 whether claimant testimony or medical opinion; and (3) if the
improperly discredited evidence were credited as true, the ALJ
would be required to find the claimant disabled on remand.

18 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014). Even where all the conditions for the
19 "credit-as-true" rule are met, the court retains "flexibility to remand for further proceedings when
20 the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled within
21 the meaning of the Social Security Act." Id. at 1021; see also Dominguez v. Colvin, 808 F.3d
22 403, 407 (9th Cir. 2015) ("Unless the district court concludes that further administrative
23 proceedings would serve no useful purpose, it may not remand with a direction to provide
24 benefits."); Treichler v. Commissioner of Social Sec. Admin., 775 F.3d 1090, 1105 (9th Cir.
25 2014) ("Where . . . an ALJ makes a legal error, but the record is uncertain and ambiguous, the
26 proper approach is to remand the case to the agency.").

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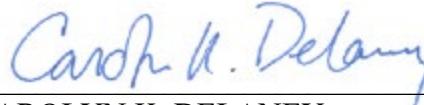
⁵ The court does not reach the remaining claims.

1 Here, the record as a whole creates serious doubt as to whether the claimant was, in fact,
2 disabled during the relevant period. On remand, the ALJ is free to develop the record as needed,
3 including asking a vocational expert hypothetical questions about available jobs based on a
4 revised RFC. The court expresses no opinion regarding how the evidence should ultimately be
5 weighed, and any ambiguities or inconsistencies resolved, on remand. The court also does not
6 instruct the ALJ to credit any particular opinion or testimony. The ALJ may ultimately find
7 plaintiff disabled during the entirety of the relevant period; may find plaintiff eligible for some
8 type of closed period of disability benefits; or may find that plaintiff was never disabled during
9 the relevant period, provided that the ALJ's determination complies with applicable legal
10 standards and is supported by the record as a whole.

11 For the foregoing reasons, IT IS HEREBY ORDERED THAT:

12 1. Plaintiff's motion for summary judgment (ECF No. 15) is granted;
13 2. The Commissioner's cross-motion for summary judgment (ECF No. 20) is denied; and
14 3. The matter is remanded for further administrative proceedings consistent with this
15 order.

16 Dated: September 16, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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